

In the Matter of:

US

v.

Kyler Schmitz

Motions

December 16, 2016

Casamo

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Phone: 703-837-0076
Fax: 703-837-8118
Toll Free: 877-837-0077

1010 Cameron Street
Alexandria, VA 22310
transcript@casamo.com

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 (Alexandria Division)

4 -----

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 v.

Case No. 1:16cr201

8 KYLER GEORGE SCHMITZ,

9 Defendant.

10 -----

11 Alexandria, Virginia

12 December 16, 2016

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The above-entitled matter came on to be
heard before the HONORABLE GERALD BRUCE LEE, Judge
in and for the United States District Court for the
Eastern Division of Virginia located at 401
Courthouse Square, Alexandria, Virginia, commencing
at 9:06 a.m., when were present on behalf of the
respective parties:

1 A P P E A R A N C E S

2

3 ON BEHALF OF THE PLAINTIFF:

4 ALEXANDER BERRANG, ESQUIRE

5 Assistant United States Attorney

6 United States Attorney's Office

7 Eastern District of Virginia

8 2100 Jamieson Avenue

9 Alexandria, Virginia 22314

10 (703) 299-3700

11

12 ON BEHALF OF THE DEFENDANT:

13 GEREMY KAMES, ESQUIRE

14 Federal Public Defender Office

15 1650 King Street

16 Suite 500

17 Alexandria, Virginia 22314

18 (703) 600-0800

19 (703) 600-0880 - fax

20

21

22 (Appearances continued on the following page.)

1 APPEARANCES (continued):

2

3 ON BEHALF OF THE DEFENDANT:

4 ERIC R. NITZ, ESQUIRE

5 MoloLamken, LLP

6 600 New Hampshire Avenue, Northwest

7 Washington, D.C. 20037

8 (202) 556-2021

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1 P R O C E E D I N G S

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3 THE CLERK: 116 criminal 201, United States
4 versus Kyler George Schmitz.

5 MR. BERRANG: Good morning, Your Honor.
6 Alex Berrang on behalf of the United States.

7 THE COURT: Good morning, Mr. Berrang.

8 MR. BERRANG: Thank you.

9 MR. KAMES: Good morning, Your Honor.
10 Jeremy Kames on behalf of Mr. Schmitz, along with
11 Eric Nitz with the firm of MoloLamken.

12 THE COURT: Good morning, Mr. Schmitz.
13 Good morning, Mr. Nitz, and Mr. Kames.

14 Mr. Kames, who is going to speak for
15 Mr. Schmitz?

16 MR. KAMES: Your Honor, if it's okay with
17 the Court, Mr. Nitz will argue the motion for
18 downward departure and then I will discuss the 3553A
19 factors.

20 THE COURT: All right. Well, let me ask
21 first, have you all reviewed the presentence report?

22 MR. KAMES: We have.

1 THE COURT: Any objection to the report?

2 MR. KAMES: None, Your Honor.

3 THE COURT: All right. Thank you. I'll
4 hear you on your motion for downward departure.

5 MR. KAMES: Thank you.

6 MR. NITZ: Good morning, Your Honor.

7 THE COURT: Good morning, Mr. Nitz.

8 MR. KAMES: The Orlando Pulse nightclub
9 shooting was one of the worst mass shootings in the
10 history of the country and it prompted a visceral
11 emotional response in Mr. Schmitz. The tweets that
12 are at issue in this case were a single emotional
13 response to that -- to that event.

14 As Dr. Boyd explained in the report, it was
15 an impulsive, spontaneous reaction to something that
16 touched Mr. Schmitz very deeply. It was a misguided
17 attempt to foster public debate on a topic that he
18 cared about.

19 THE COURT: How many tweets were there and
20 over what period of time, Mr. Schmitz?

21 MR. KAMES: There were quite a few tweets,
22 Your Honor, and they ranged from -- as described in

1 the presentence report, from June 13th to, I
2 believe, June 18th. There may have been some tweets
3 after that time period as well that were related to
4 this, but there certainly were more than one tweet.
5 There were --

6 THE COURT: Well, I'm sure it's more than
7 one. I guess one of the questions I have is the
8 U.S. Capitol Police went to visit Mr. Schmitz,
9 right?

10 MR. KAMES: Yes, Your Honor.

11 THE COURT: And after that he continued to
12 tweet?

13 MR. KAMES: He did.

14 THE COURT: All right. So what makes this
15 aberrant behavior, Mr. Schmitz?

16 MR. KAMES: It was a single response to
17 this -- this attack. It was a single attempt to
18 process his emotions after the attack and it was a
19 marked deviation from how he conducted himself up to
20 that point.

21 Certainly -- I recognize that it's unusual
22 under these circumstances for a downward departure

1 to be granted; but if ever there's a case where it's
2 warranted it's this one, given the emotional nature
3 of Mr. Schmitz's reaction to those events and the
4 course of conduct that followed afterwards. It
5 really was a single continuous attempt to try and
6 process his emotions in light of that shooting.

7 THE COURT: Well, do the guidelines allow
8 me to take into account multiple violations to
9 determine aberrant behavior or is it just one --
10 more than one?

11 MR. KAMES: The guideline -- the guideline
12 states that it has to be a single criminal
13 occurrence or a single criminal transaction; but in
14 light of this context and the uniqueness of the
15 circumstances, the entire course of conduct
16 following the shooting can be viewed as one single
17 criminal transaction.

18 THE COURT: All right. Thank you.

19 MR. KAMES: Thank you, Your Honor.

20 THE COURT: All right.

21 MR. BERRANG: Thank you, Your Honor. The
22 Government believes what the -- what Your Honor was

1 driving at in the questions you asked defense
2 counsel is this notion what is a single criminal
3 occurrence or single criminal transaction.

4 On that front the Government directs the
5 Court's attention to a case that was cited in our
6 position paper, which is United States versus
7 Hillyer. And in that case, it involved illegal prop
8 dredging. And there are multiple instances of
9 illegal prop dredging in that case. And as a
10 result, because it happened more than once, that
11 criminal act happened more than once in Hillyer, the
12 Fourth Circuit said that a downward departure was
13 not appropriate.

14 The Government also --

15 THE COURT: You didn't bring a charge for
16 every single threatening tweet, did you?

17 MR. BERRANG: We charged five tweets, Your
18 Honor.

19 THE COURT: But you could have charged 20,
20 right?

21 MR. BERRANG: I -- I don't believe we
22 could've charged 20, Your Honor.

1 THE COURT: You could have charged every
2 single tweet that was threatening?

3 MR. BERRANG: We could have charged --
4 there were -- there was potentially a few more
5 tweets we could have charged as threatening.

6 THE COURT: But you used your discretion
7 not to bring those charges?

8 MR. BERRANG: That's correct, Your Honor.

9 THE COURT: Well, why is this all one
10 transaction?

11 MR. BERRANG: Well, the Government's view
12 is that this was not one transaction, especially
13 when you view the course of conduct. You have an
14 initial tweet, which brings the U.S. Capitol Police
15 to the defendant's house. The defendant then has a
16 conversation with the Capitol Police about what he
17 has tweeted and is informed by Capitol Police that
18 his conduct is a crime. It's a crime to threaten
19 federal officials --

20 THE COURT: There is nothing wrong with
21 being upset about the terrible tragedy at the Pulse
22 nightclub, no more than it is to be upset about what

1 happened at the Emanuel Church. There is nothing
2 unconstitutional about that, is there?

3 MR. BERRANG: Absolutely not, Your Honor.

4 THE COURT: And one can be upset and angry
5 and disturbed by it.

6 MR. BERRANG: That's correct.

7 THE COURT: I've actually been to Emanuel
8 Church many times. I have friends who attend that
9 church. In fact, one was at that church the very
10 night of the murder and she had just left church
11 about an hour earlier. And had that man showed up
12 at the church an hour earlier, you would have had a
13 packed church because the church meeting was that
14 night.

15 But you can't just go out and threaten
16 government officials because you think the gun
17 control laws are lax, can you?

18 MR. BERRANG: No, Your Honor.

19 THE COURT: Okay. Thank you.

20 MR. BERRANG: Thank you.

21 THE COURT: Anything further, Mr. Nitz?

22 MR. KAMES: Just one quick point, Your

1 Honor. Nobody is saying that what Mr. Schmitz did
2 was okay. Nobody is saying that his response to
3 these attacks is how someone should process those
4 emotions. But the Court can certainly consider that
5 this was a spontaneous emotional response and that
6 all of these tweets resulted from that single
7 spontaneous emotional response and that this was
8 highly unique and highly unusual circumstances.

9 And Mr. Schmitz responded in a way that was
10 highly unusual given how he conducted himself in the
11 past. And for that reason, we'd ask the Court to
12 grant the downward departure.

13 THE COURT: All right. Let the record
14 reflect this matter is before the Court for
15 sentencing. The probation officer has properly
16 prepared the report. And the question presented is
17 whether or not the Court should grant a downward
18 departure from the applicable guidelines based upon
19 aberrant behavior on U.S. sentencing guidelines
20 5K2.20.

21 And the guideline provides, in exceptional
22 cases, a downward departure may be warranted where

1 the defendant committed a single criminal occurrence
2 or a single criminal transaction. One, that was
3 committed without significant planning. Two, that
4 was in limited duration. And, three, that
5 represents a marked deviation by the defendant from
6 an otherwise law-abiding life. And the Government
7 cited the Hillyer case and defense counsel has cited
8 several cases as well.

9 First, let me say that I understand that
10 Mr. Schmitz has strong views about what happened and
11 I think that many people have strong views about
12 what happened. The question here is whether his
13 multiple tweets, which were -- are now the subject
14 of this case, were a single criminal occurrence or
15 single criminal transaction.

16 I'm sure that in Mr. Schmitz' mind all his
17 activity was directed at the Pulse nightclub
18 tragedy, and I certainly would understand that. But
19 the challenge here is that even after being told by
20 the Capitol Police that he should not do these
21 things, he continued to do them.

22 So it seems to me that first this would not

1 qualify for downward departure because it was not a
2 single occurrence of a criminal transaction, it was
3 not a limited duration.

4 It may well be a deviation from the
5 defendant's otherwise law-abiding life. And I
6 certainly can address those issues under 3553A, but
7 for purposes of the guidelines calculation, my
8 judgment is that the multiple threats over multiple
9 days -- and I also have considered the United States
10 versus Pierson case from the Ninth Circuit -- and my
11 judgment is that the motion for downward departure
12 be denied.

13 Therefore, the applicable guideline range
14 here is a criminal history category, Category 1,
15 offense level 14. The guideline range is 15 to 21
16 months and a one to three-year term supervised
17 release.

18 My understanding is and I've accepted a
19 plea agreement, which says that both sides agree to
20 no more than six months of incarceration, if
21 incarceration is imposed, should be applicable in
22 this case.

1 Does the Government want to be heard on
2 sentencing in this matter, Mr. Berrang?

3 MR. BERRANG: Thank you, Your Honor.

4 Your Honor, as the Government noted in its
5 position paper, the request that we're putting forth
6 to the Court is for six months incarceration, three
7 years supervised release with computer monitoring,
8 and that's consistent with the plea agreement.

9 The defense counsel and defendant are
10 asking for a minimal sentence of probation. And the
11 Government believes that its difference in views of
12 what the appropriate sentence here is a reflection
13 of different views on what this conduct was and what
14 it was not. And in the Government's view, this was
15 not, as the defendant suggests, political activism.
16 It was not funny, where he's just testing jokes, and
17 it wasn't certainly excused by what others have
18 done.

19 What the defendant did was alarming, it was
20 disturbing and, most importantly, it was unlawful.
21 As the presentence report shows, the defendant used
22 clear, descriptive language; he threatened to shoot

1 three U.S. senators in the head, explaining his
2 desire to, quote, "Admire how a victim's brains are
3 going to splatter across the room."

4 And while defendant now claims that he had
5 no intention of carrying out his threats, the
6 Government submits that his words in June 2016
7 suggested otherwise. He transmitted tweets asking
8 others about how to get a gun. He even tweeted,
9 quote, that he was, quote, "Literally going to buy a
10 gun," end quote, and use it to shoot a U.S. Senator,
11 quote, "in the face."

12 The U.S. senators, the Senate staff, the
13 general public on Twitter who saw these tweets, they
14 had no way of knowing whether the defendant wasn't
15 actually serious as he now claims. And with respect
16 to the culpability of the defendant versus other
17 individuals who have committed similar acts, the
18 Government disagrees that the appropriate
19 comparisons are the Jones, Turner, Leslie and Dalton
20 defendants that the defendant cites to.

21 The Government's review of those cases
22 indicates that those cases involved single tweets --

1 or single threats, rather. And in the case of
2 Jones, the threat that was transmitted was stated
3 generically and conditionally, if-then statements.

4 If we are to put the defendant's conduct on
5 a -- on a continuum where at one end you have the
6 Jones, Turner, Leslie, and Dalton case, the
7 Government submits that the other end of that
8 continuum would be the cases of Morton, Chesser, and
9 al-Khattab. Those cases were cases involving the
10 posting to a Web site in support of a violent jihad,
11 the solicitation of murder, among others the
12 creators of South Park and Jewish organizations.

13 The defendant here posted multiple,
14 specific threats, many of which were sent after
15 being interviewed by U.S. Capitol Police and told
16 that his conduct constituted a crime. The
17 Government submits that his conduct, if we were to
18 put it on that continuum, falls closer to the
19 Morton, Chesser and al-Khattab defense than to the
20 Jones, Turner, Leslie and Dalton defense.

21 And it should be noted that al-Khattab
22 received 30 months for using the Internet to place

1 another in fear of death or serious injury while
2 Morton, Chesser received 60 months for communicating
3 threats.

4 Now, the Government believes that the
5 appropriate sentence here is six months. Such a
6 sentence, in the Government's view, would
7 appropriately punish his conduct, promote respectful
8 law, and deter others from committing similar acts.
9 Because the reality here is what the defendant did
10 was not a protest, it was not the defendant
11 exercising his First Amendment rights. What it was
12 was the defendant trying to get what he wants, gun
13 control, through fear and coercion.

14 We live in a world where brazen threats of
15 violence over the Internet or in person are all too
16 common. The defendant's words were published on a
17 widely accessed social media platform and seen by an
18 unknowable number of people. His punishment today
19 should send a clear message to the victims, others
20 contemplating similar conduct, and to our country
21 that the making of unlawful threats, whether to
22 federal officials or to ordinary citizens, will not

1 be tolerated.

2 Thank you.

3 THE COURT: All right. All right.

4 Mr. Kames, I'll hear from you.

5 MR. KAMES: Your Honor, as the Court knows,
6 we've asked for a sentence of one year of probation.
7 And we believe that the key to understanding this
8 case is reflected in the letters that have been
9 submitted on behalf of Mr. Schmitz, along with the
10 reports of Dr. Boyd and Dr. Golbeck.

11 First, let me speak about Kyler Schmitz.
12 He's a 28-year-old young man who has never been in
13 any significant trouble before in his life, who is
14 passionate about social justice. That's why he came
15 to Alexandria in the first place from Minnesota to
16 work for a public interest organization and advocate
17 for the interest that he cares deeply about.

18 When he came seven years ago, he interned
19 with a documentary film crew that produced a film
20 called Bully, which was released in 2011. And it
21 documented the story of five kids and their families
22 as they navigated the 2009/2010 school year. He

1 volunteered with the human rights campaign and civil
2 rights organization that's devoted to promoting
3 equality for gay and transgender people.

4 There is also a letter that we've submitted
5 from Shirley Ginwright, the president of the Fairfax
6 County NAACP, where Kyler has been a member for and
7 volunteered for the past two years.

8 As Mr. Schmitz's fiancé writes: Social
9 justice is what Mr. Schmitz is passionate about.
10 His commitment to social justice is undoubtedly tied
11 to his experiences as a young gay man who was
12 bullied and beaten up because of his sexual
13 orientation.

14 According to Dr. Boyd's report, his
15 negative experiences as a young man contributed to
16 Mr. Schmitz's desire to avoid direct confrontation,
17 it hampered his ability to assert himself and
18 express negative emotions. These two facets of his
19 personality, his commitment to social justice and
20 his repressed desire to express himself, they found
21 an outlet in social media.

22 But there is a third factor of his

1 personality that also contributed to this offense,
2 and that is the well-documented and lengthy history
3 of ADHD. People with ADHD typically have difficulty
4 inhibiting their impulsive behavior. They have a
5 hard time maintaining attention, they have a hard
6 time organizing, they have discontrolled emotions.
7 And the combination of all of these elements in
8 Kyler's personality were exacerbated on the
9 Internet.

10 As Dr. Boyd explained, Kyler found an
11 outlet for his emotions and his political activism
12 and in social media online. Unfortunately, the
13 Internet is characterized by several features that
14 promote impulsivity and disinhibition, such as
15 anonymity, the ability to engage and disengage at
16 will, online cultures that value free expression
17 over anything else. In essence, his interpersonal
18 and executive functioning -- functioning impairments
19 were dramatically amplified by the unique features
20 of social media.

21 Now, let me speak about the offense
22 conduct. Professor Golbeck described Twitter in her

1 declaration as essentially the wild west of
2 communication. People make extraordinarily
3 disturbing and threatening statements on Twitter all
4 the time, almost always using an anonymous account.
5 And that's not to say that it's okay, but it is to
6 provide a context for the conduct in this case. As
7 she writes, this is -- well, she says that in the
8 realm of communications on Twitter, this was at the
9 low end of the degree of threatening communications
10 that are made on Twitter.

11 To be clear, Kyler is not someone who has
12 made threats on the Internet as a matter of course,
13 he is not some Internet troll who engaged in a
14 regular practice of making rude or inappropriate
15 statements on Twitter or anywhere else.

16 As the Court knows, this conduct occurred
17 in the days following the worst mass shooting in
18 modern American history where 49 mostly gay people
19 were shot to death by a gunman with an assault
20 rifle.

21 The Government suggests that Mr. Schmitz
22 may be merely spinning his conduct in the context of

1 the Pulse shooting, but there should be no doubt
2 that Mr. Schmitz was motivated by the same impulses
3 that have guided his interest in social justice
4 generally. When he was interviewed on June 15th by
5 law enforcement, he cried when he told law
6 enforcement that he felt afraid to be in public
7 places.

8 His fiancé wrote that Mr. Schmitz was
9 emotionally compromised by the shooting in Orlando.
10 His godmother wrote that, quote, "The reality that
11 the people at that club were slaughtered because
12 they were assumed to be gay is a hard reality to
13 accept because it suggests that they were hated for
14 what they are and not who they are."

15 Now, as the Court knows, none of that is an
16 excuse for the threats that Mr. Schmitz tweeted in
17 the days after the shooting. And the Government
18 says, I think accurately, that these threatening
19 tweets involved, quote, "clear and descriptive
20 language," but you can't look at these tweets in
21 isolation and have any understanding of the context
22 in which they were made.

1 Tweets, as the Court knows, are limited to
2 140 characters. And they're -- because they're so
3 short, they're often linked together with other
4 messages. And just like you can't take a page from
5 the middle of a book and understand what that book
6 is trying to say, you can't look at one tweet, the
7 tweets that the Government identified in the
8 charging document, and understand that those tweets
9 are all of what Mr. Schmitz was trying to convey.

10 And I'd like to make three points that are
11 mitigating this case. First, the nature of the
12 statements at issue in the context of Twitter were
13 not extreme. Professor Golbeck explains that the
14 statements at issue in this case, when taken in the
15 context of the original post indicating them as an
16 online image-oriented protest, are relatively mild
17 in comparison. They fall at the lower end of
18 threatening communications that occur on Twitter.

19 And she says that because the messages were
20 linked to an initial post in which the @Chirperson
21 account said, quote, "I would never buy a gun. No
22 one should ever need to. That said, I'm going to

1 shoot some gif or image guns at republicans."

2 And so when the Government says there was
3 no way of knowing for the recipients of these
4 communications, so the people who work with the
5 individuals who were mentioned, there is no way of
6 knowing whether this was a real or not a real
7 threat. But there is a way, and that is to look at
8 all the statements in context and the original post
9 that they were linked to. That is not to say that
10 this is not unlawful. It is to provide context for
11 these statements.

12 Second point, by all accounts, Mr. Schmitz
13 had no intention of actually carrying out any
14 threat. He is adamantly against guns. He has never
15 touched one. He made no serious effort to ever get
16 one.

17 The third point is that this offense was
18 not motivated by a desire for money or personal
19 animosity towards someone that Mr. Schmitz
20 personally knows. That is often the context of
21 threats, so it could be against a former loved one
22 or for some other nefarious reason. This is someone

1 who is deeply affected and angered by the worst mass
2 shooting in modern American history.

3 And given his documented inability or
4 difficulty in controlling his impulses, as Dr. Boyd
5 said, in an environment where his impairments were
6 dramatically amplified, he expressed himself in a
7 way that he now realizes was the worst thing he's
8 ever done.

9 I will say that they're -- and I think --
10 and it's very clear in the presentence report, there
11 has been a marked changed in Mr. Schmitz since he
12 was arrested in this case. He hasn't touched
13 alcohol since June of this year, he's progressed in
14 counseling, he's found a job that he enjoys. He
15 started to think about his future career.

16 He is also now a convicted felon. He's
17 been on house arrest for months. He lost his job as
18 an Uber driver. He was unable to attend a close
19 family's wedding -- family member's wedding. So
20 he's already been punished in significant ways.

21 As for the Government's recommendation for
22 a sentence of incarceration, I suggest that it would

1 do more harm than good. It would require
2 Mr. Schmitz, of course, to lose his job. And he is
3 precisely the type of person who would not benefit
4 from incarceration and could be victimized in that
5 context.

6 There is absolutely zero evidence that a
7 sentence of incarceration would have a greater
8 deterrent effect on him than the prosecution itself.
9 And in terms of the public generally, suggesting
10 that this case is going to stop threats on Twitter
11 is like trying to put a Band-Aid on a firehose.

12 A six-month sentence would cost the
13 government about \$15,000 and it would get very
14 little in return for that investment.

15 A sentence of probation with a condition
16 that he be monitored by probation along with the
17 other standard conditions then -- when I say
18 "monitored," I mean a monitoring of his -- his
19 social media activity, would be sufficient to
20 satisfy the purposes of sentencing in this case.

21 Again, the underlying conduct arose because
22 of a unique event. There is no indication that

1 Mr. Schmitz would ever engage in this type of
2 behavior again. He has fully complied, for example,
3 with the pretty strict conditions of pretrial
4 release that he's been under. Such a sentence would
5 also --

6 THE COURT: How long has he been on
7 pretrial release, Mr. Kames?

8 MR. KAMES: He's been on release -- I think
9 he was brought in on June 25th, he spent four days
10 in jail and -- since that time. So at the end of
11 June, he's been on pretrial release.

12 THE COURT: More than five months now?

13 MR. KAMES: That's right.

14 THE COURT: Okay.

15 MR. KAMES: And such a sentence would also
16 be consistent with the series of cases that we
17 outlined that have also involved similar single
18 count charges of making threats.

19 Now, the Government points to some very
20 different cases. The Morton case, the Chesser case,
21 off the top, some of those involve very different
22 allegations of conduct, conduct -- conduct involving

1 very different and much more serious violations of
2 the federal code, including terrorism offenses.
3 That's not this case.

4 Under the circumstances here, where you
5 have an individual who is passionate about social
6 justice, has conditions that are documented and that
7 we've presented to the Court that suggest that he
8 was disinhibited in the Internet environment, and in
9 the context of the unique event of this mass
10 shooting using an assault rifle, we have done enough
11 in this case to deter Mr. Schmitz and others who may
12 be in a similar situation.

13 And for those reasons, Your Honor, we
14 believe that a year of probation is sufficient and
15 not greater than necessary to satisfactory the
16 purposes of sentencing.

17 THE COURT: Thank you.

18 Mr. Schmitz, if you'll come up, please.
19 Schmitz, how long were you in jail?

20 THE DEFENDANT: Four -- four or five days.

21 THE COURT: Have you ever been to jail
22 before?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: How long were you in jail
3 before?

4 THE DEFENDANT: No longer than a night.

5 THE COURT: One night?

6 THE DEFENDANT: Yeah.

7 THE COURT: Is there any statement that you
8 want to make on your own behalf?

9 THE DEFENDANT: This was an incredibly
10 stupid thing for me to do. It was
11 counterproductive, it was immature, it was damaging.
12 I'm very sorry that I did it and I will not be doing
13 this ever again.

14 THE COURT: Since Schmitz pled guilty to
15 interstate threatening communication -- and I have
16 reviewed the submissions of your lawyer and the
17 Government and the letter submitted from your family
18 members, your mother's letter, from your father,
19 from your aunt, your fiancé, Ms. Roe, Ms. Ginwright
20 from the NAACP, and the manager of your restaurant,
21 I've read them.

22 Here is the thing, Mr. Schmitz, you heard

1 me say a moment ago that I have strong views about
2 what happened in Emanuel Church, but there are
3 limits on what you can do. And I think that what
4 happened here, as I view the context, the Pulse
5 nightclub shooting was a horrible tragedy, not just
6 for the families of the victims who were murdered
7 and slaughtered, but for a whole community, a whole
8 nation who mourn for what happened there.

9 And, as you know, because you were active
10 in social justice, the way to change things is
11 through voting, is through petitions, is through
12 protest, but it is not to threaten members of
13 Congress, it is not to threaten members of the
14 Senate, it's not to threaten anyone else. That
15 won't change anything.

16 And I've also considered the fact that
17 these individuals are in public office. I guess
18 they're used to having people despise their views,
19 disagree with their views, but they're not used to
20 being threatened with death or their brains being
21 splattered on the sidewalk. That is not something
22 that anyone should have to endure and the person who

1 has -- (inaudible) -- protest. And this was not a
2 protest. This was a very dangerous threat -- series
3 of threats that you made.

4 My question now is whether to send you to
5 prison for a long period of time, whether that will
6 punish you sufficiently, whether that will somehow
7 make the members of Congress who were threatened
8 feel safe as you were off the streets. And also
9 whether to consider your -- your mental health,
10 which your lawyer has provided me information about
11 your ADHD and how that may impact impulsive
12 behavior. And, of course, we all know that Twitter
13 is a place that people are frequently communicating
14 ideas and issues, including the new president that
15 seems to be there every single day. So -- but you
16 can't use it the way that you did here.

17 As I look over your whole life, and this is
18 a situation where I look over your whole life, I
19 don't think this is consistent with the person
20 you've been and I don't think that putting you in
21 prison for an additional period of time is going to
22 be sufficient punishment.

1 But let me caution you, this is a very
2 serious offense; and if I do what your lawyer asks,
3 what you should know is if I were to see you again
4 for any reason whatsoever, drunk driving, fights on
5 the street, anything like that, I will put you in
6 prison. Not jail, prison.

7 So here is what I'm going to do. I think
8 that the guidelines here -- even the Government felt
9 that the guidelines are excessive. I agree to a
10 six-month sentence. And you have completed five
11 months of home confinement, which suggests to me
12 that you're a person who conforms his behavior and
13 adheres to the rules.

14 So I'm going to place you on two years of
15 active probation, require you to be on home
16 confinement for an additional 90 days. And as along
17 as you adhere to the rules for home confinement, you
18 adhere to the rules of probation for two years, at
19 the end of 12 months, I'll review the case. And if
20 your lawyer and the Government and probation officer
21 tells me there's no point of keeping you on
22 probation another year, I'll consider early

1 termination. But what you should know is 90 days of
2 home confinement are the same terms and conditions
3 that you have for pretrial release, which is that
4 you cannot leave your place of residence except for
5 employment and activities approved in advance by the
6 probation officer.

7 That you comply with the requirements of
8 computer monitoring as administered by the probation
9 officer, which means that software will be installed
10 on your computer or any smart phone you use, and
11 inspection will be performed at random by the
12 probation office and you are not to remove the
13 software or tamper with it.

14 I think it's time for you to stay off
15 Twitter and Facebook and all those other things. So
16 there'll be no social media, and you should not have
17 any accounts. And I don't know all the names of
18 them. I bet you do. Instagram, there's another --
19 there is five or six of them, I don't want you on
20 any of them.

21 And I want you participating in mental
22 health treatment at the direction of the probation

1 officer. And you're required to waive
2 confidentiality regarding any mental health
3 treatment, release information to the probation
4 office, and cost of the program to be paid by you
5 based upon your ability to pay, and directed by the
6 probation office.

7 And I'm going to have you participate in a
8 substance abuse testing and treatment, not because I
9 think you have a problem, I want to make sure that
10 you don't have a problem and that alcohol abuse has
11 not become a problem. I've seen some indication of
12 excessive use of alcohol and I want to make sure you
13 understand that that's not going to be tolerated.

14 So to be clear, I'm placing you on two
15 years of active probation, home confinement for an
16 additional 90 days. And you've already served
17 almost five months. So I'm assuming you can do this
18 and not break the rules. But if you break the rules
19 and you come back, I'll put you in prison. Do you
20 understand?

21 I'm not going to impose any fine, cost of
22 incarceration, cost of supervision. And I'll assess

1 \$100, and that will be paid right away. Thank you.

2 You're excused.

3 MR. KAMES: Thank you, Your Honor.

4 (Whereupon, the proceedings at 9:38 a.m.
5 were concluded.)

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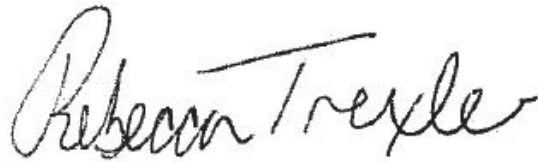
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22

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, REBECCA TREXLER, Court Reporter and
3 Notary Public in and for the Commonwealth of
4 Virginia at Large, and whose commission expires
5 August 31, 2021, do certify that the foregoing is a
6 true, correct, and full transcript of the
7 proceedings.

8 I further certify that I am neither related
9 to nor associated with any counsel or party to the
10 proceedings; nor otherwise interested in the event
11 thereof.

12
13 
14

15

16

Rebecca Trexler

17

Notary Public

18

Commonwealth of Virginia at Large

19

Notary No. 7243327

20

21

22

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